

Application No. 09/553,573
Amendment dated March 17, 2008
Reply to Office Action of December 17, 2007

REMARKS

Applicant cancelled claim 2 without prejudice or disclaimer of its subject matter and amended claims 1, 102, and 147 to further define Applicant's claimed invention.

Applicant notes that copies of Forms PTO-1449 accompanying the Information Disclosure Statements dated February 7, 2006 and April 24, 2007 have not been returned to Applicant with the Examiner's initials in the left-hand column. Applicant respectfully requests the Examiner to indicate that the entries on these two PTO-1449 forms were considered by marking the appropriate column under the heading "Examiner Initial" and return copies of these PTO-1449 forms to Applicant with the next action. Attached hereto for the Examiner's convenience as Attachments A and B, is a copy of Form PTO-1449 submitted on February 7, 2006 and a copy of Form PTO-1449 submitted on April 24, 2007, respectively.

In the Office Action, the Examiner rejected all claims under 35 U.S.C. § 112, second paragraph. To expedite the prosecution of this application, Applicant deleted the language objected to by the Examiner from independent claims 1, 102, and 147, thereby rendering moot the Examiner's rejection under 35 U.S.C. § 112, second paragraph.

The Examiner rejected claims 1, 4-8, 11-34, 36-38, 40-42, 101-130, 132-135, and 137-174 under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a), as being obvious over U.S. Patent No. 6,113,638 to Williams et al. ("Williams"); rejected claims 1, 4-8, 11-34, 36-38, 40-42, 101-130, 132-135, and 137-174 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,609,635 to Michelson ("Michelson") in view of U.S. Patent No. 5,192,327 to Brantigan; and rejected claims 1, 4-8, 11-34, 36-38, 40-42, 101-130, 132-135, and 137-174 under 35 U.S.C. § 103(a) as being unpatentable over Michelson in view of Williams.

The Examiner indicated that claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant cancelled claim 2 and amended independent claims 1 and 102 to include the allowable subject matter of claim 2. Applicant cancelled the limitation directed to a maximum height added in the

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amendment dated October 9, 2007 that raised the rejection by the Examiner under 35 U.S.C. § 112. (Office Action, page 4, lines 1-3). Accordingly, Applicant submits that independent claims 1 and 102 are allowable.

Applicant amended independent claim 147 to recite an implant with "a first distance as measured along the mid-longitudinal axis of said implant from an intersection of said leading end and the mid-longitudinal axis of said implant to an intersection of the mid-longitudinal axis of said implant and a plane perpendicular to and bisecting the length along the mid-longitudinal axis of said implant, said first distance being greater than a second distance as measured along the mid-longitudinal axis of said implant from an intersection of said perpendicular plane and said exterior side wall to the junction of said leading end and said exterior side wall;" and "a third distance as measured along the mid-longitudinal axis of said implant from a junction of said leading end and said interior side wall to an intersection of said interior side wall and said perpendicular plane, said third distance being greater than said second distance, said first distance being greater than said third distance." Claim 147 as amended includes the allowable subject matter of objected dependent claim 2 and the relevant intervening language also recited in independent claims 1 and 102.

Applicant submits that independent claims 1, 102, and 147 are patentable and that dependent claims 4-8, 11-34, 36-38, 40-42, 101, and 103-130, 132-135, 137-146, and 148-174, dependent from one of independent claims 1, 102, and 147, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees

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required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our
Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: March 17, 2008

By: _____


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